

REMARKS

Claims 1, 3, 4, 8-11, 13, 14, 18-21 and 28-30 have been amended. Claims 2 and 12 have been cancelled. Therefore, claims 1, 3-11 and 13-30 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Provisional Double Patenting Rejections:

The Examiner provisionally rejected claims 9, 10, 19 and 20 under 35 U.S.C. § 101 as claiming the same invention as claims 9, 18, 28 and 37 of U.S. Application number 10/670,849, and claims 8 and 18 over claims 12 and 26 of U.S. Application number 10/670,550. Withdrawal of these rejections is respectfully requested in light of the above amendments.

The Examiner provisionally rejected claims 9, 10, 19, 20, 29 and 30 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 11, 20, 30, 47 and 56 of co-pending Application No. 10/670,849, and claims 8, 18 and 28 over claims 1, 15 and 40 of co-pending Application No. 10/670,550. These rejections should be reconsidered in view of the above amendments and the amendments made in the co-pending applications.

Section 101 Rejection:

The Examiner rejected claims 1-9, 11-18 and 21-28 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses this rejection. However, to expedite prosecution, the independent claims have been amended to refer to storing the different presence state. Withdrawal of the § 101 rejection is respectfully requested.

Section 102(b) Rejections:

The Examiner rejected claims 1, 2, 5-7, 9-12, 15-17, 19-22, 25-27, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by McDowell, and claims 1, 2, 4, 5, 7, 8, 11, 18, 21 and 28 as being anticipated by Horvitz (PCT No. WO 01/69387). Applicant respectfully traverses these rejections in light of the following remarks.

Regarding claim 1, neither McDowell nor Horvitz teaches a calendar application storing schedule information corresponding to a given user, wherein said schedule information is indicative of an activity status of said given user at one or more given times; querying said calendar application for said schedule information; determining for each given time whether a current presence state specific to an instant messenger client corresponds to said activity status indicated by said schedule information, and in response to determining that the current presence state specific to the instant messenger client does not correspond to said activity status indicated by said schedule information, automatically assigning and storing a different presence state that corresponds to said activity status, wherein said current presence state and said different presence state each correspond to said given user.

The Examiner refers to McDowell's Table 5, p12. However, Table 5 merely indicates preference information for receiving messages. The preference information of Table 5 is not queried from a calendar application. Moreover, the preference information of Table 5 is not indicative of an activity status of said given user at one or more given times. For example, if a user specifies in Table 5 that he does not wish to receive messages on certain days or at certain times, that merely indicates a preference, not an actual activity status. The user's activity status could be anything. The Examiner also refers to McDowell's teaching that "Campaign Manager queries the Presence Server to know if a particular subscriber's phone is ON or OFF before attempting to send a targeted mobile commercial message." However, this has nothing to do with querying a calendar application. Moreover, querying for ON/OFF state of the user's phone has nothing to do with the user's activity status as indicated by schedule information. Also,

the brief reference to calendars in paragraph 0135 of McDowell does not teach the specific limitations of amended claim 1.

In regard to Horvitz, the Examiner points out that Horvitz teaches an analyzer that uses “data in the user’s calendar” and makes observations about the user’s activity to determine states such as “busy” or “open to receiving notification”, (P8, lines 16-21) Horvitz teaches the creation of a statistical model called an Analyzer. Horvitz’s “Analyzer” builds a “statistical model to determine the likelihood that the user is in a given state of attention...” (P8, lines 16-21) The statistical model described in Horvitz determines the probability of availability and physical location. Horvitz does not teach the specific limitations of Claim 1. In particular, Horvitz does not teach determining for each given time whether a current presence state specific to an instant messenger client corresponds to said activity status indicated by said schedule information, and in response to determining that the current presence state specific to the instant messenger client does not correspond to said activity status indicated by said schedule information, automatically assigning and storing a different presence state that corresponds to said activity status.

Regarding independent claims 11 and 21, Applicant’s remarks given above for claim 1 regarding McDowell and Horvitz also apply to claims 11 and 21.

Section 103(a) Rejections:

The Examiner rejected claims 3, 13 and 23 under 35 U.S.C. § 103(a) as being unpatentable over McDowell in view of Heinonen et al. (U.S. Patent 6,728,530 (hereinafter “Heinonen”), and claims 4, 14 and 24 as being unpatentable over McDowell in view of Coan et al. (U.S. Patent 7,120,424) (hereinafter “Coan”). Applicant respectfully traverses these rejections for at least the reasons given above in regard to their respective independent claims.

In regard to the rejections under both sections 102 & 103, Applicant also asserts that the rejection of numerous ones of the dependent claims is further unsupported by the teachings of the cited art. However, since the rejection of the independent claims has been shown to be improper, a further discussion of the rejection of the dependent claims is not necessary at this time.

CONCLUSION

Applicant respectfully submits that the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzl, P.C. Deposit Account No. 501505/5681-69800/RCK.

Respectfully submitted,

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